

### REMARKS

Claims 1-8 and 11-16 remain in the application and stand finally rejected.

Reconsideration of the final rejection is respectfully requested in light of the following reasons.

#### Claim Rejections

Claims 1-8, 11-14, and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,275,623 to Brophy et al. ("Brophy"). The rejection is respectfully traversed.

Claim 1 is patentable over Brophy at least for reciting: "the first optical output signal and the second optical output signal having a beam center-to-center separation of about 2.5mm and a beam diameter of about 1.6mm as measured at about 13.5% peak amplitude of the beam." Claim 1 recites features that allow an apparatus for adjusting power levels of optical signals to efficiently employ a micro-optic polarization diversity module (Specification, page 17, lines 3-11).

To establish a prima facie case of obviousness, the prior art reference must teach or suggest all the claim limitations. Here, as noted in the last office action, Brophy does not disclose that its polarization manager 30 is capable of processing optical signals having a beam center-to-center separation of about 2.5mm and a beam diameter of about 1.6mm as measured at about 13.5% peak amplitude of the beam. The last office action suggests that it would have been obvious to one of ordinary skill in the art to choose such beam parameters "to provide an optimized beam diameter that is large enough to allow adequate resolution of the signal without requiring a very large expensive birefringent crystal and corresponding system." However, this "motivation" is in the present application – not in Brophy or any of the references of record. It is respectfully submitted that Brophy does not teach or suggest the use of a micro-optic polarization diversity module and hence cannot possibly motivate one of ordinary skill in the art to employ optical signals with the claimed beam parameters. Brophy also does not teach or suggest how to use micro-optics as a polarization diversity module. The present

application, not any of the references of record, provides guidelines to those skilled in the art how to use micro-optics as a polarization diversity module by disclosing optimum beam parameters.

The last office action requires the Applicants to provide a showing of criticality for the claimed beam parameters, citing to MPEP §716.02-§716.02(g). As mentioned, the claimed beam parameters allow for the use of micro-optics in polarization diversity modules. More importantly, criticality is not an issue here because the cited reference, Brophy, does not meet all the limitations of the claim and none of the missing limitations are taught or suggested by any of the references of record. ***None of the cited references disclose any beam parameter.*** The beam parameters and the motivation to use such a beam are disclosed in the present application, not in any of the references of record. The obviousness rejection is thus tantamount to taking an impermissible Official Notice.

Therefore, it is respectfully submitted that claim 1 is patentable over Brophy.

Claims 2-8 depend on claim 1, and are thus patentable over Brophy at least for the same reasons that claim 1 is patentable.

Like claim 1, claim 11 is patentable over Brophy at least for reciting: “the first output light beam and the second output light beam having a beam center-to-center separation of about 2.5mm and a beam diameter of about 1.6mm as measured at about 13.5% of peak amplitude of the beam.” Claims 12-16 depend on claim 11, and are thus patentable over Brophy at least for the same reasons that claim 1 is patentable.

Claims 1, 6-8, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2003/0223748 by Stowe et al. (“Stowe”). The rejection is respectfully traversed.

Claim 1 is patentable over Stowe at least for reciting: “the first optical output signal and the second optical output signal having a beam center-to-center separation of about 2.5mm and a beam diameter of about 1.6mm as measured at about 13.5% peak amplitude of the beam.” As mentioned, claim 1 recites features that allow an apparatus for adjusting power levels of optical signals to efficiently employ a micro-optic polarization diversity module (Specification, page 17, lines 3-11). Like Brophy, Stowe

does not teach or suggest the use of a micro-optic polarization diversity module and thus cannot possibly motivate one of ordinary skill in the art to employ the claimed beam parameters. Also, like Brophy, Stowe does not teach or suggest how to use micro-optics for polarization diversity modules. Therefore, Stowe does not and cannot meet all the limitations of claim 1, as required in obviousness rejections. The discussion above regarding criticality equally applies to Stowe.

Therefore, it is respectfully submitted that claim 1 is patentable over Stowe.

Claims 6-8 depend on claim 1, and are thus patentable over Stowe at least for the same reasons that claim 1 is patentable.

Claim 15 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Stowe based on the rejection of claims 1 and 6-8. The patentability of claims 1 and 6-8 over Stowe has already been explained above.

#### Conclusion

For at least the above reasons, it is believed that claims 1-8 and 11-16 are in condition for allowance. The Examiner is invited to telephone the undersigned at (408)436-2112 for any questions.

If for any reason an insufficient fee has been paid, the Commissioner is hereby authorized to charge the insufficiency to Deposit Account No. 50-2427.

Respectfully submitted,  
Clinton B. Carlisle et al.

Dated: 3/6/2006

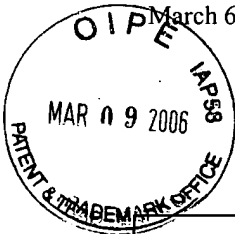
*Patrick D. Benedicto*

Patrick D. Benedicto, Reg. No. 40,909  
Okamoto & Benedicto LLP  
P.O. Box 641330  
San Jose, CA 95164  
Tel.: (408)436-2110  
Fax.: (408)436-2114

Docket No. 10021.001510 (P0225-1)

Response To Final Office Action

March 6, 2006



**CERTIFICATE OF MAILING**

I hereby certify that this correspondence, including the enclosures identified herein, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. If the Express Mail Mailing Number is filled in below, then this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service pursuant to 37 CFR 1.10.

Signature:

*Patrick D. Benedicto*

Typed or Printed Name:

Patrick D. Benedicto

Dated:

March 6, 2006

Express Mail Mailing Number  
(optional):